IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6909 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AKRITI TRUSTE THRO TRUSTEE

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 6909 of 1990

MR DD VYAS for Petitioner No. 1-1/4

RULE SERVED for Respondent No. 1

Mr. KP Raval, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 10/01/2005

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 28th July 1989 in exercise of suo

motu powers setting aside the order passed by the Deputy Collector, Valsad dated 11th June 1984 by which the Deputy Collector, Valsad has granted permission under Section 73(AA) of the Bombay Land Revenue Code {"the Code" for short} and also under Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 {hereinafter referred to as "the Tenancy Act"} with regard to the lands in question.

2. One Manchiben Makabhai Patel was the owner of the land in question and the original landowner being an Adivasi there was a ban with regard to transfer of the land in question as envisaged in Section 73(AA) of the Code. It appears from the record that the original landowner submitted an application on 21.6.1983 for granting necessary permission under Section 73(AA) of the Code for selling the land in question to the petitioner for industrial purpose. The Deputy Collector, Valsad, by order dated 11.6.1984 not only granted permission under Section 73(AA) of the Code in favour of the original landowner but also granted permission under Section 63 of the Tenancy Act in favour of the petitioner who was a non-agriculturist. It is the case of the petitioner that pursuant to the order dated 11.6.1984 the petitioner got registered sale deed executed on 9.7.1984. It is the case of the petitioner that as per the original condition of order the petitioner was required to obtain NA permission for industrial purpose within the period of six months from the date of execution of the sale deed which the petitioner could not get for the reasons beyond control of the petitioner and therefore an application was submitted for extension of time to get NA permission and by order dated 7.4.1986 time was extended upto 30th June 1986. The order dated 11.6.1984 passed by the Deputy Collector, Valsad came to be taken under suo motu review/revision by the State Government, i.e., Additional Chief Secretary, Revenue Department (Appeals) which was numbered as SRD No. 8/86. A show cause notice came to be issued upon the petitioner dated 31st March 1989 and the petitioner was required to show cause why the order dated 11.6.1984 passed by the Deputy Collector, Valsad should not be set aside on the ground that the petitioner-purchaser is a non-agriculturist and before purchasing the land the petitioner had not obtained permission under Section 63 of the Tenancy Act, and further stating therein that without following any procedure as required under Rule 36 of the Bombay Tenancy and Agricultural Lands Rules {"the Rules" for short} and under Section 63 of the Tenancy Act, permission has been granted. It is also further submitted in the show cause notice that in fact application was submitted before the

Deputy Collector, Valsad, only for permission under Section 73(AA) of the Code and that too by the original landowner and no application was submitted by the petitioner for permission under Section 63 of the Tenancy Act. It is also stated in the show cause notice that even prior to the order passed by the Deputy Collector agreement to sell came to be executed on 9.5.1983 and therefore there was breach of Section 63 of the Tenancy Act for which proceedungs under Section 84(b) of the Tenancy Act had already been initiated. It is also stated in the show cause notice that before granting permission under Section 73(AA) of the Code proper inquiry was not conducted to satisfy whether after selling the land in question by the Adivsai the original landowner would be having sufficient land for her maintenance or not. The petitioner appeared before the revisional authority and filed their reply. It was contended on behalf of the petitioner that exercise of powers by the revisional authority after a period of almost 4 years is exercise of powers after unreasonable period and the same could not have been exercised by the revisional authority. It is submitted in the reply that the Deputy Collector had jurisdiction to grant permission under Section 63 of the Tenancy Act as well as 73(AA) of the Code. It was also further submitted in the reply that after the impugned order the position is changed as the petitioner has executed the registered Sale Deed with the original landowner and therefore requested to withdraw the show cause notice.

3. The revisional authority by judgment and order dated 28th July 1989 set aside the order passed by the Deputy Collector, Valsad dated 11.6.1984 by holding that the Deputy Collector granted permission under Section 63 of the Tenancy Act without there being any application and thus the order passed by the Deputy Collector is without jurisdiction. It is also further held by the revisional authority that there is a breach of condition of even the original order dated 11.6.1984 inasmuch as the petitioner had not obtained any NA permission within the stipulated and extended time. It is also further held by the revisional authority that before granting permission under Section 73(AA) of the Code proper inquiry was not conducted by the Deputy Collector to satisfy whether after granting the permission to the original landowner to sell the land the original landowner would be having sufficient land to maintain her family members or not. So far as the question with regard to exercise of powers after unreasonable period is concerned, the revisional authority has held that as the original order passed by the Deputy Collector is without

jurisdiction and that except execution of the sale deed the position has not been changed and/or altered and therefore the revisional authority was justified in exercising the powers after a period of 4 years as the revisional authority has also found that even till 1989 when the show cause notice was issued the land in question was not developed and even NA permission was not obtained.

4. Being aggrieved and dissatisfied with the impugned order dated 28th July 1989 passed by the revisional authority, State Government, in quashing and setting aside the order passed by the Deputy Collector, Valsad, dated 11.6.1984, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

5. Shri Daval D. Vyas, learned advocate appearing on behalf of the petitioner, at the outset, does not press the contention with regard to exercise of powers by the revisional authority after unreasonable period and/or belatedly. He has submitted that if the revisional authority was of the opinion that before granting permission under Section 73(AA) of the Code proper enquiry was not held by the Deputy Collector the revisional authority ought to have remanded the matter to the concerned authority for passing an order afresh after holding proper enquiry. He has also further submitted that so far as the permission granted by the Deputy Collector under Section 63 of the Tenancy Act is concerned it is true that the petitioner at no point of time submitted application under Section 63 of the Tenancy Act, but in view of the fact that the petitioner has entered into the sale deed pursuant to the order passed by the Deputy Collector dated 11.6.1984 and has paid consideration to the original landowner the petitioner is ready and willing to move an application before the competent authority for grant of permission under Section 63 of the Tenancy Act afresh which can be considered in accordance with law and on merits. So far as jurisdiction of the Deputy Collector for grant of permission under Section 63 of the Tenancy Act as well as Section 73(AA) of the Code is concerned, considering the provisions of the Code more particularly Section 10(2) of the Code read with Section 2(e) of the Tenancy Act the Deputy Collector has jurisdiction to grant such a permission. Under the circumstances he has requested to allow the present Special Civil Application and/or to remand the matter to the Deputy Collector for deciding the matter of grant of permission under Section 73(AA) afresh so as to enable the petitioner to move an

appropriate application under Section 63 of the Tenancy Act.

6. Shri KP Raval, learned AGP has supported the order passed by the revisional authority. He has submitted that in view of the fact that even there was no application submitted by the petitioner for grant of permission under Section 63 of the Tenancy Act, there was no occasion for the Deputy Collector to grant permission under Section 63, and the order passed by the Deputy Collector granting permission under Section 63 of the Tenancy Act is without jurisdiction. He has also further submitted that even before granting permission under Section 63 neither proper enquiry was conducted nor necessary procedure was followed by the authority, i.e., the Deputy Collector. He has also further submitted that so far as grant of permission by the Deputy Collector under Section 73(AA)(1) of the Code is concerned the revisional authority has rightly held that proper enquiry was not held before granting permission, inasmuch as the Deputy Collector has not considered whether after granting permisison under Section 73(AA)(1) of the Code and sale of such land the original landowner would be having sufficient land to maintain her family members or not. Under the circumstances he has submitted that the impugned judgment and order passed by the revisional authority is just and proper and therefore requested to dismiss the present Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties. It is an admitted position that the original landowner is an Adivasi and there is a ban on transfer of land by an adivasi in favour of a non-adivasi under Section 73(AA)(1) of the Code. It is also an admitted position that the petitioner was a non-agriculturist at the relevant time. Under Section 73(AA)(1) of the Code, an adivasi can make an application for selling the land in question as provided in the said provision. For that purpose, the competent authority is required to hold necessary enquiry to satisfy whether grant of permission to sell the land by the adivasi would be in the interest of adivasi or not and whether sufficient land would be available to the adivasi for her survival and/or maintenance of her family members or not. It is an admitted position that the original landowner moved an application under Section 73(AA)(1) of the Code. No application for granting permission under Section 63 of the Tenancy Act was moved by the petitioner. Under the circumstances, when there was no application moved by the petitioner for granting permission under Section 63 of the Tenancy Act, there was no reason for the Deputy

Collector to grant permission under Section 63 of the Tenancy Act. When there was no application under Section 63 of the Act, there was no occasion for the Deputy Collector to hold necessary inquiry and proceedings as required under Section 63 of the Tenancy Act read with Rule 36 of the Rules. Thus, the grant of permission by the Deputy Collector, Valsad in favour of petitioner under Section 63 of the Tenancy Act was without any jurisdiction. Thus, the order has been rightly set aside by the revisional authority of the State Government.

8. So far as finding of the revisional authority with regard to grant of permission under Section 73(AA)(1) of the Code is concerned, the revisional authority could have remanded the matter to the competent authority for deciding the same afresh in accordance with law and on merits and after holding necessary inquiry as envisaged in Section 73(AA)(1) of the Code. There is another finding given by the revisional authority also which is with regard to not obtaining NA permission by the petitioner within the stipulated and extended time. Shri Vyas, learned advocate appearing on behalf of the petitioner has submitted that the petitioner had moved an application in the month of December 1986 and in view of the fact that the same was not decided, there is a deemed NA permission as the same has not been considered by the revisional authority. From the bare reading of the reply submitted by the petitioner and the impugned order, it appears that nothing is on record to show that the petitioner has at any point of time moved an application as stated in the present Special Civil Application in the month of December 1986. The petitioner has also not produced anything on record of this petition to show that the petitioner has in fact moved any application for NA permission in the month of December 1986. In fact, even before the revisional authority, it was not the case of the petitioner that because of non-decision on the application for NA permission there is a deemed permission. However, in view of the statement made by the petitioner on oath in the present Special Civil Application that they have made an application for NA permission in the month of December 1986, the same may be verified by the appropriate authority on production of evidence to that effect.

9. For the reasons stated hereinabove, it will meet the ends of justice if the following directions are issued;

(i) So far as the order passed by the Deputy Collector, Valsad granting permission under

Section 73(AA)(1) of the Code is concerned, while confirming the order passed by the revisional authority dated 28.7.1989, the matter is remanded to the Deputy Collector, Valsad for deciding the same afresh and in accordance with law and on merits after holding necessary enquiry as envisaged in Section 73(AA)(1) of the Bombay Land Revenue Code and also to consider whether after granting permission to sell the land in question in favour of the petitioner there would be sufficient land left with the original landowner for maintenance of his family members or not.

(ii) On remand, if the Deputy Collector, Valsad grants the permission under Section 73(AA)(1) of the Bombay land Revenue Code, then in that case, it will be open for the petitioner to satisfy the Deputy Collector, Valsad whether the petitioner had at any point of time moved any application subsequently for NA permission or not, and whether there is breach of any condition of the original order dated 11.6.1984 or not. For that purpose, the petitioner is also required to explain and satisfy the Deputy Collector, Valsad that the petitioner had submitted application for N.A. permission in December 1986 as alleged in the Special Civil Application and there was a deemed permission and the land in question is developed and/or the same is used for industrial purpose by the petitioner or not.

(iii) So far as the order passed by the Deputy Collector, Valsad dated 11.6.1984 granting permission under Section 63 of the Act is concerned, considering the reasons stated hereinabove the same has been rightly set aside by the revisional authority as no application was submitted by the petitioner for granting permission under Section 63 of the Tenancy Act and that no enquiry had been initiated or held before granting such permission. It will, however, be open for the petitioner to move an application before the appropriate authority for granting permission under Section 63 of the Tenancy Act afresh which may be considered by the appropriate authority in accordance with law and on merits.

(iv) The order passed by the revisional authority, setting aside the order passed by the Deputy Collector dated 11.6.1984, insofar as it relates

to grant of permission under Section 63 of the Tenancy Act, is not disturbed and the same is confirmed and so far as Section 73(AA)(1) of the Bombay Revenue Code is concerned, the matter is remanded as stated in para (i) hereinabove.

10. Rule is made partly absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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